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PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEABED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 4

CHAIRMAN'S SUMMARY OF DISCUSSIONS

Use of the United Nations laissez-passer by the Tribunal and its officials

1. At the first meeting of Special Commission 4, several items were identified for consideration by the Special Commission, among them two relevant issues with regard to the use of the United Nations laissez-passer:

(a) Elaboration of a draft headquarters agreement with the host country;

(b) Preparation of an agreement relating to the privileges and immunities of members and other officers of the Tribunal, etc.

2. The item on the headquarters agreement was defined as follows:

> "The question of the headquarters agreement covers several aspects of the relationship between the Tribunal and the host country besides matters pertaining to the site alone. Within the broad context of the headquarters agreement, consideration would also need to be given to aspects of the relations with the host country such as the status, privileges and immunities to be accorded to: the Members, Registrar, officials and staff of the Tribunal who would be primarily responsible for the conduct of its work; and to parties and their representatives, witnesses, and assessors, whose presence before the Tribunal, when required, would have to be assured." (emphasis added)

3. Relevant international conventions and resolutions that have a bearing on the question were also identified. However, it was noted that with regard to the headquarters agreement per se, there was a long practice of the United Nations and its related agencies which could serve as an appropriate reference.

4. Moreover, it was pointed out that the relationship to be established between the Tribunal and the appropriate intergovernmental bodies would have to be examined, as a separate item, in some detail.

5. A working paper (LOS/PCN/SCN.4/WP.4) was later drawn up outlining the issues for consideration with regard to the above items. In part I, entitled "Privileges and immunities", the following was stated in paragraph 5:

> "When travelling in connection with the business of the Tribunal, a member should enjoy all the privileges and immunities granted to diplomatic envoys ... When a member does not reside in the host country, he should be accorded every facility for travelling to and from the seat of the Tribunal and for entering the country free from restrictions or any requirements concerning immigration or temporary residence. Travel to and from the headquarters district should not in any way be restrained or restricted."

6. Three documents containing the issue of the laissez-passer were later drawn up by the secretariat: "Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany" (LOS/PCN/SCN.4/WP.5/Part II (article 22) and WP.5/Rev.1 (article 23)); "Draft Convention/Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea" (LOS/PCN/SCN.4/WP.6 (article 14) and WP.6/Rev.1 (article 18)); and "Draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea" (LOS/PCN/SCN.4/WP.9 (article 14)).

I. DRAFT HEADQUARTERS AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE FEDERAL REPUBLIC OF GERMANY

A. LOS/PCN/SCN.4/WP.5/Part II

7. The Special Commission had to determine if document LOS/PCN/SCN.4/WP.5 contained all required provisions to ensure that the Tribunal would be in a position to exercise the functions entrusted to it, unhindered and under the best conditions possible in the host country. In particular, the Commission was to ascertain whether all the immunities, privileges and facilities needed for the work of the Tribunal, its members and staff were comprehensively and precisely reflected in the draft.

8. Article 22 of the document was entitled "Laissez-passer, notifications, identity card". The article dealt with, among other things, the recognition of the laissez-passer issued by the Tribunal to its members, its Registrar and its officials and the granting of visas by the host country. Introducing the article, the Secretary pointed out that the wording basically followed paragraph 6 of General Assembly resolution 90 (I) of 11 December 1946.

9. In drafting the article it had been assumed that the Protocol adopted by the meetings of States parties on the privileges and immunities of the Tribunal would provide for the issuance of laissez-passer to Members and officials of the

Tribunal, similar to the issuance of United Nations laissez-passer by the International Court of Justice.

Paragraph 1

10. In view of the fact that the number of persons covered by paragraph 1 (a) would be relatively small, there was a general agreement in the Special Commission that it might not be appropriate for the Tribunal to issue a laissez-passer of its own. It was stated that that issue should be examined in the context of a relationship agreement between the Tribunal and the United Nations for the laissez-passer of the United Nations to apply in the case of the Tribunal. It was further argued that the specialized agencies of the United Nations also used the United Nations laissez-passer for their officials.

11. However, it was agreed that, pending a final decision on the matter, the existing provisions of paragraph 1 (a) should be retained as a basis for negotiations with the host country.

12. It was suggested, with reference to article 1 of the draft headquarters agreement (use of terms) which in subparagraph (j) regulates the use of the term "officials of the Tribunal", that the words "the Registrar" in the third line should be deleted.

Paragraph 2

13. With regard to the duty of the Registrar to notify the competent authorities concerning the persons referred to in paragraph 2, one representative pointed out that the information to be transmitted should be as precise as possible. That could be done, for instance, along the lines of paragraph 3 of the article.

Paragraph 3

14. It was stated that under paragraph 3 persons referred to in articles 18 to 20 were to be furnished with a forge-proof identity card. This includes persons who might stay in the host country only for a short time, for whom a simplified identity card could be issued to avoid the relatively high costs involved in printing.

15. It was proposed that the paragraph should follow immediately after paragraph 1 and that paragraph 2 should become paragraph 3.

Paragraph 4

16. No suggestions were made on the paragraph.

B. LOS/PCN/SCN.4/WP.5/Rev.1

17. At the tenth session of the Preparatory Commission, delegations continued the discussions on the issue.

18. In the revised document, LOS/PCN/SCN.4/WP.5/Rev.1, delegations considered the new article 23, "Laissez-passer, identity cards and notification" in view of the relevant paragraph 5 of article 24, "Entry, transit and sojourn in the host country".

Article 23, paragraph 1

19. Several delegations agreed with the drafting of paragraph 1.

20. However, other delegations were of the view that the footnote 1/ contained in article 18 of the revised draft Protocol on privileges and immunities (LOS/PCN/SCN.4/WP.6/Rev.1) should be reproduced under article 23.

21. One delegation was not in favour of such suggestion because it went against the agreed assumption that the Tribunal was to be independent from other international organizations.

22. It was argued that the proposal was in line with the idea that the Tribunal should enter into relationship arrangements with the United Nations and benefit from them. Moreover, that way, there would not be proliferation of travel documents.

23. In the end it was accepted to keep paragraph 1 as it stood with the footnote from article 18 of document LOS/PCN/SCN.4/WP.6/Rev.1.

24. Delegations accepted the rest of the article with the agreement that, with regard to paragraph 2 and in the case of stateless persons, a line would be added dealing with their situation.

II. PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

A. LOS/PCN/SCN.4/WP.6

25. In discussing article 14 entitled "Laissez-passer", delegations expressed several views.

Paragraph 1

26. One delegation was of the view that taking into account previous discussions on the same issue, 2/ and for obvious practical reasons, the Tribunal should be permitted to use the United Nations laissez-passer instead of a separate one. He called the attention of the Commission to the draft headquarters agreement regarding the Seabed Authority, which in its article 37 provide for such ability.

27. The Secretary pointed out that the article had been drafted on the basis that the Tribunal would issue its own laissez-passer but, in the event that there was an appropriate relationship arrangement with the United Nations, then that agreement could provide for the use of the United Nations laissez-passer.

Paragraph 2

28. Several delegations were of the view that paragraph 2 of article 14 was not necessary, if not redundant, because it referred to a situation already taken care of in articles 8 and 11 of the document. Therefore it was suggested to delete it.

29. But several other delegations were against the deletion, because they argued that the situation portrayed in the above articles were in fact different from what was intended in article 14. Paragraph 2 of article 14 was concerned mainly with the issue related to the laissez-passer and what facilities it would accord to the users.

30. The Secretary explained that paragraph 1 dealt with the recognition of the standard laissez-passer as a valid travel document. Paragraph 2 referred to the situation where the users of the laissez-passer already enjoyed privileges and immunities by their status as diplomats, as enjoyed by the Registrar, or in the case of the United Nations, the Secretary-General. In the first case (para. 1), the laissez-passer did not carry privileges and immunities but only facilitated travel. In the second case, (para. 2), the carrying of a laissez-passer entailed requirements regarding diplomatic privileges and immunities.

31. Different suggestions were put forward to redraft paragraph 2. One delegation suggested insertion of a qualification to the laissez-passer which would say: "... travelling on diplomatic laissez-passer ...". Another delegation suggested that paragraph 2 be deleted and paragraph 1 be redrafted as follows: "The Tribunal may issue two laisser-passer, a diplomatic one to the members of the Tribunal and a regular one to the officials". Another suggestion was to redraft paragraph 2 as follows: "... Laissez-passer issued to the members of the Tribunal will reflect privileges, immunities and facilities granted to them under ...".

32. In the end, it was agreed that the Secretariat should draft a compromise, a new article 14 which would take into consideration the views expressed on paragraph 2, in particular.

Paragraph 3

33. One delegation was of the view that paragraph 3 should be more condensed. He suggested to say only the following: "Applications for visas, where required, for members of the Tribunal and the Registrar, ... shall be dealt with as speedily as possible". He also suggested that the drafting should be in a form of a recommendation rather than in mandatory language. However, his delegation was of the view that the last two sentences of the paragraph were not necessary; the situations referred to were not under any country's control.

34. As a drafting matter, another delegation suggested that the word "expeditiously" be used instead of "speedily".

B. LOS/PCN/SCN.4/WP.6/Rev.1

35. The issue of the use of the United Nations laissez-passer was considered again in examining the revised document on the Privileges and Immunities, (LOS/PCN/SCN.4/WP.6/Rev.1). During the deliberations on article 18, delegations showed a certain reluctance to accept the article as it stood.

36. It was argued that the article did not respect the independent character of the Tribunal, while another delegation questioned the necessity to issue so many laissez-passer.

37. In the end it was agreed to delete paragraph 2 of article 18 as being unnecessary since the situation was already dealt with in article 10 of the Protocol.

38. Paragraph 3 would remain but be merged with paragraph 4, since both dealt with the issuance of visas.

III. "DRAFT AGREEMENT ON COOPERATION AND RELATIONSHIPS BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA" (LOS/PCN/SCN.4/WP.9)

39. The issue of the use of laissez-passer was also considered when examining the document on cooperation and relationships between the United Nations and the Tribunal.

40. Article 14 entitled "Laissez-passer" had been drawn up in similitude to article 17 governing the practice of the World Intellectual Property Organization (WIPO). It was drafted as follows:

> "Members of the International Tribunal, the Registrar and other officials of the International Tribunal and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the Registrar of the International Tribunal, to use the laissez-passer of the United Nations."

41. In introducing it, the Secretary stated that the article dealt with the use of the United Nations laissez-passer by the officials of the Tribunal. The Secretariat took into consideration the discussions on privileges and immunities held in relation with the Headquarters Agreement when drafting this article.

42. Some delegations pointed out that the article again raised the problem of the independence of the Tribunal. Clarifications were sought as to the implications of the phrase "special arrangements". Those delegations also questioned the ability of the General Assembly, without imposing new requirements or expenses on its Member States, to actually extend all the rights and obligations attached to the laissez-passer to the members and officials of the Tribunal.

43. The Secretary explained that should the Tribunal decide to use the laissez-passer of the United Nations some practical arrangements would have to be made between the United Nations and the Tribunal.

44. Some other delegations were of the view that the laisser-passer of the United Nations should be used by the Tribunal and that the article as formulated should be retained.

45. It was pointed out by the Secretary that there was a general practice favouring the use of the United Nations laissez-passer.

46. At the end, the issue of the use of the United Nations laissez-passer was not resolved by the Commission. But delegations could refer to the different documents dealing with the question. 3/ In that regard, it was requested that the different articles on the same issue be harmonized.

47. Since the present document is a summary of discussions, it is not possible to reflect each and every intervention fully or reproduce suggested formulations. The Secretariat has maintained a complete record of all suggestions and these will be taken into account when redrafting the document. Should any representative feel that an important matter has been omitted, the Chairman would appreciate being informed.

Notes

1/ The footnote states that: "In the event that arrangements are entered into with the United Nations for the issuance of the laissez-passer of the United Nations, then the Tribunal may not need to issue its own laissez-passer".

2/ See Chairman's summary of discussions (LOS/PCN/SCN.4/L.11/Add.2) and the deliberations on article 23 of document LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1.

3/ See documents LOS/PCN/SCN.4/WP.16/Add.2; LOS/PCN/SCN.4/WP.16/Add.3; LOS/PCN/SCN.4/WP.16/Add.4; LOS/PCN/SCN.4/L.11/Add.1 and Add.2; LOS/PCN/SCN.4/L.13/Add.1 and Add.2; LOS/PCN/SCN.4/L.15.